

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2860 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.
2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

ARJUNSINH T RAJPUT

Versus

STATE OF GUJARAT & ORS

Appearance:

MR. G.M. JOSHI, FOR MR. Y.N. OZA for Petitioner.
MISS HARSHA DEVANI, A.G.P. FOR RESPONDENT NO.1.
MR RD DAVE RESPONDENT NO. 2.

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 14/03/96

ORAL JUDGEMENT

The grievance voiced by the petitioner in this Special Civil Application is that the respondents are not releasing/disbursing the amount of the subsidy sanctioned in their favour.

2. The State of Gujarat emphasizing for repaid industrialization to encourage balanced growth of industries and to generate employment in the rural and less developed areas brought in operation a scheme

initially with effect from 1-4-1986 and subsequently by the resolution dated 16-10-1990 known as "CAPITAL INVESTMENT SUBSIDY SCHEME 1990-95". The operation period of this scheme is 16-8-1992 to 15-8-1995. (Hereinafter to referred to as the Scheme).

3. Ambica Granites Private Ltd. of which the petitioner is a Managing Director under this scheme applied for loan and subsidy. The respondents sanctioned loan worth Rs. 80,80,000/- and subsidy worth Rs.20,00,000/- to the petitioner by the letter dated 17-12-1994. The say of the petitioner is that at the time of sanction, the policy of the respondent was to release subsidy along with disbursement of amount of loan at the ratio of of 85:15. Relying upon the said policy, the petitioner created assets and planned his project finance. The petitioner complains that inspite of the facts that he has become entitled to the amount of subsidy, the same has not been arbitrarily disbursed. The petitioner submits that on account of this he is facing difficulty in carrying out the project. He will have to borrow the fund from somewhere and he will have to pay interest on the borrowed amount. The petitioner submits that he has changed his position to his detriment because of the promise given by the respondents to release subsidy at the ratio of 85:15.

4. Mr. S.V. Hathila, Manager(Legal), has filed the affidavit on behalf of the Gujarat State Finance Corporation(hereinafter referred to as GSFC), stating that under the Resolution dated 24-12-1993 power of disbursement of subsidy under the scheme 1990-95 has been vested with the District Industries Centre/Industries Commissioner. It is further stated that as per the procedure GSFC is required to determine the amount of subsidy and GSFC would decide eligibility on the basis of verification report and thereafter will issue payment order to the District Industries Centre along with the various documents including project completion certificate to enable the District Industries Centre to release payment of subsidy. It is also further stated that Completion Certificate can be issued only by GSFC if project is completed and commercial production is commenced by the Industrial Unit.

5. Another affidavit has been filed by Mukesh M. Pandya, Manager (Raw Material), District Industries Centre, Ahmedabad giving date of production of petitioner's Unit as 10-10-1995. Giving date of production it is stated that as the peittioner commenced production only in October 1995 as such the petitioner is

not entitled to disbursement of subsidy on priority. It is asserted that the Unit is entitled to disbursement of subsidy in chronological order of pending claims prepared on the basis date of production. As per the record of the Industries Commissioner office, subsidy claims of the Units which have gone into commercial production before 31-3-1995 and complied with all conditions have been settled.

6. On behalf of the State Government Mr. Mahendra P. Dave, Under Secretary, Industries & Mines Department, has filed the affidavit, saying that during the period 1991 to 1995 the State Government sanctioned subsidy to 4168 Units and sanctioned the amount of Rs.488 crores. It is stated that sudden flow of investment has created huge liability on the State Exchequer. It is stated that the budgetary provisions for the scheme is totally controlled under the State Plan, which is approved by the Planning Commission every year. The State Government tried to supplement the budgetary provision by allocating additional funds to the extent possible either by reappropriation or by supplementary provisions during the period from 1985-86 to 1989-90 the allocation of the funds was to the tune of Rs.94 crores, while during from 1990-91 to 1994-95, the allocation of funds was to the tune of Rs.243 crores. It is further stated that in view of the liberalized licencing policy of the Central Government announced on 25-7-1991, the flow of investments to the State Government has increased tremendously and simultaneously the rate of new investments in the State has increased every year and as such inspite of best efforts to disburse the claims for subsidy there has been huge back log. Considering the situation, the State Government has framed guidelines for disbursement of such pending claims. Thus, the State Government has prepared waiting list of pending claims in chronology keeping in view the date of commercial production. Thus, the burden is so large that the State Government cannot disburse the same at once.

7. I have heard Mr. Joshi, learned Advocate appearing for the petitioner, learned A.G.P. for the State and Mr. Rajesh D. Dave, learned Advocate for GSFC. It is contended by Mr. Joshi that the petitioner has made substantial investment and altered his position to such an extent that he would suffer considerable loss if the subsidy is not immediately disbursed to him. In other words, the petitioner relies upon the promise and assurance as contemplated in the scheme 1990-95. Mr. Joshi, learned Advocate for the petitioner submits that the State Government now cannot be permitted to go back

from its promise and assurance and ask him to stand in queue and wait for his turn for disbursement of subsidy. He submits that as per the scheme the petitioner is entitled to disbursement of subsidy even prior to commercial production though in the present case production has also commenced. He has invited my attention to Clause 8 of the Scheme, which reads as under:-

"DISBURSEMENT:- The subsidy shall be disbursed, either by the District Industries Centre, Industries Commissioner, Gujarat State Financial Corporation for the cases which have been sanctioned by the respective agency. The disbursement of subsidy will be done in proportion to the creation of the fixed eligible assets upto 85% of the sanctioned amount of subsidy. The balance 15% will be disbursed only after the Unit commences production. If the Unit fails to commence commercial production within two years after receiving 85% of the subsidy, the amount of subsidy will be liable to be recovered as arrears of land revenue.

The claim for the disbursement of the subsidy will be submitted by the industrial unit to the respective authority indicating clearly the acquisition of the fixed eligible assets, its cost supported by documentary evidence as prescribed by Industries Commissioner."

8. Reading of clause 8 of the Scheme shows that the subsidy is to be disbursed in proportion to creation of the fixed eligible assets upto 85% of the sanctioned of the subsidy. The balance 15% is to be disbursed only if the Unit commences commercial production. Mr. Joshi, submits that the petitioner is definitely entitled to disbursement of 85% of the sanctioned subsidy even prior to commencement of commercial production and the petitioner Company shall be entitled to balance 15% on commencement of commercial production. Mr. Joshi, learned Advocate for the petitioner relies upon the various decisions reported in (1) AIR 1979 SUPREME COURT 621, (2) AIR 1986 SUPREME COURT 806 and (3) 1992 (2) GLR 1232.

9. It is now well settled principle of law that where the Government make promise knowing or intending that it would be acted upon by the promisee and, in fact, the promisee, acting in reliance of it, alters his position, the Government would be bound by the promise

and that would be enforceable upon the Government at the instance of the promisee. In *Motilal Padampat Sugar Mills Co. Ltd. Vs. The State of Uttar Pradesh and others*, reported in AIR 1979 SUPREME COURT 621, the Supreme Court held that doctrine of promissory estoppel is applicable against the Government in the exercise of its governmental, public, or executive functions and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel. It is further held that there can be no promissory estoppel against the legislature in the exercise of its legislative functions nor can the Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. The Apex Court pointed out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires, if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the Court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority. The Apex court held that the doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it. The Supreme Court in its later decision in the case of *Union of India and others Vs. India Tobacco Co. Ltd.*, reported in AIR 1986 SUPREME COURT 806, expressed its complete agreement with the view expressed in *M/s Motilal Padampat Sugar Co. Ltd.* case, on this point.

10. Turning to the facts of the present case Mr. Mahendra P. Dave, Under Secretary, Industries and Mines Department, has stated in his affidavit that in the year 1977, the State of Gujarat had introduced cash subsidy scheme. It was intended to disburse the subsidy on the creation of the assets as there was no backlog for payment of subsidy. In the year 1977 the Government was able to accommodate almost all eligible Units for disbursement within the budgetary provision made by the Government. While forming the new scheme the previous experience was taken into account and the provisions of disbursement upto 85% before commercial production was made. It is further stated that the Government announced attractive schemes from time to time for sale tax exemption as well as sales tax subsidy. On 25-7-1991,

the Central Government announced liberalised licencing policy on account of which the flow of investments to the State has increased tremendously and simultaneously the rate of new investments in the State has also increased. It is also pointed out that during the period from the year 1985-86 to 1988-89 the State Government sanctioned subsidy to 3786 Units amounting to Rs.120 Crores and from the year 1991 to 1995 the State Government sanctioned subsidy to 4168 Units and sanction an amount of Rs.488 Crores and sudden inflow of investment has created huge liability on the State Exchequer. It is further stated that in absence of proper budgetary provision it is not possible for the State Government to meet such huge liability.

11. Thus, the question arises for consideration is whether in the facts of the case writ can be issued to the respondents the State of Gujarat to make budgetary provision to fulfil its promise by immediately disbursing sanction subsidy. Under the constitutional set up, allocation of fund is under the domain of the Legislature and the executive has no power to exceed sanction. In the case of State of Himachal Pradesh and Another Vs. Umed Ram Sharma and Others, reported in AIR 1986 SUPREME COURT 847, the Supreme Court while dealing with the budget provision under the Constitution held that the Executive has no power to exceed total sanction without the consent or assent of the Legislature and the Court cannot impinge upon that field of legislature. In view of this, I decline to issue writ or direction to the State Government to disburse the sanctioned subsidy on priority.

12. In view of the aforesaid, this Special Civil Application is dismissed. Rule discharged. No order as to cost.

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